Fontaine Body & Hoist Company *and* Industrial Union Department, AFL–CIO on behalf of United Steelworkers of America, AFL–CIO. Case 15–CA–10884

May 9, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On November 30, 1990, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions, a supporting brief, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Fontaine Body and Hoist Company, Collins, Mississippi, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Standard Dry Wall Products, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] Member Devaney finds it unnecessary to pass on whether the remarks of Acting Plant Manager Bob Schimel regarding a wage increase violated Sec. 8(a)(1), in view of his adoption of the judge's finding that the remarks of Vice President Jerry Keel and Acting President Kelly Dier regarding a wage increase violated Sec. 8(a)(1).

Denise Frederick and *Charlotte White, Esqs.*, for the General Counsel.

James C. Hoover, Esq. (Clark, Paul, Hoover, & Mallard), of Atlanta, Georgia, for the Respondent.

Robert R. Corley, Staff Representative, Steelworkers, of Pittsburgh, Pennsylvania, and *Hubert Coker*, Coordinator, Industrial Union Department, of Jackson, Mississippi, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Hattiesburg, Mississippi, on November 14, 15, and 16, 1989. The charge was filed on May 26, 1989,[1] and an amended charge was filed on November 7. The Regional Director for Region 15 issued the complaint on July 31, alleging that Fontaine Body and Hoist Company (the Company), had violated Section 8(a)(1) and (3) of the National Labor Relations Act. The Company, by its timely answer to the complaint, denied that it had committed the alleged unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

Fontaine Body and Hoist Company, a Delaware corporation, manufactures, and sells at nonretail, dump bodies, hoists, and spreader bodies, at its facility in Collins, Mississippi, where it annually sells and ships products, goods, and materials valued in excess of $50,000, directly to points outside the State of Mississippi. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Company also admits, and I find, that the Industrial Union Department, AFL–CIO, and the United Steelworkers of America, AFL–CIO, referred to collectively as the Union, are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

On February 17, the Union began an organizing campaign among the employees at the Company's Collins, Mississippi facility. Three days later, the Company became aware of the union activity among its Collins plant employees. On February 27, a petition seeking a representation election among those same employees was filed with the National Labor Relations Board (the Board), in Case 15–RC–7434. Thereafter, the Regional Director scheduled an election in Case 15–RC–7434 for April 13. However, after unfair labor practice charges were filed in Cases 15–CA–10839 and 15–CA–10839–2, the Regional Director postponed the election, at the Union's request. The charges in Cases 15–CA–10839 and 15–CA–10839–2 were withdrawn. However, on May 26 and November 7, respectively, the Union filed the charge and the amended charge in this case. The issues presented here include whether, in response to the union activity among its employees, the Company violated Section 8(a)(1) of the Act by: (a) interrogating its employees regarding their union activity, membership in the Union, and their sentiment toward the Union; (b) soliciting its employees to revoke their authorization of the Union as their collective-bargaining representative; (c) threatening employees with plant closure, discharge, layoff, loss of overtime, and other benefits if they selected the Union as their collective-bargaining representative; (d) promising increased wages to its employees if they abandoned the Union; (e) advising employees that the Company would never sign a contract, and that selection of the Union as their collective-bargaining representative would be futile; (f) creating an impression among its employees that it was keeping their union activities under surveillance; (g) threaten-

[1] All dates are in 1989, unless otherwise indicated.

ing to blackball employees if they actively supported the Union; (h) promising promotion to employees if they abandoned the Union; (i) interrogating employees regarding the union membership, activities, and sentiments of fellow employees; (j) informing employees that the Company had withheld a bonus from them because they had engaged in union activity; (k) informing employees that other employees had received a bonus because they had not engaged in union activity; and, by (l) promulgating a rule forbidding employees from talking about the Union while they were working.

Further issues presented are whether the Company violated Section 8(a)(3) and (1) of the Act by: (a) withholding bonuses from its employees; (b) issuing a warning to employee Jackie Wayne Owens; and, (c) enforcing plant safety rules more stringently after April 14.

B. *Interference, Restraint, and Coercion*

1. Charles Fairley

The Company has employed Bobby Harvey since February 6, 1981. At the time of the hearing in this case, Harvey was a welder under Charles Fairley's supervision. Harvey was a union activist. He signed a petition supporting the Union, and asked other employees to sign a similar petition. Harvey also wore a union button at the Company's plant, 5 days per week, from April until October.

On February 17, Supervisor Fairley summoned Harvey to his office. Fairley began by asking Harvey's opinion of him as a supervisor. Harvey said he thought Fairley was ''ok.'' The next topic was the Union. Fairley asked Harvey what he thought about the Union. Harvey responded that he thought the Union was ''okay'' and that he supported it. Fairley asked if Harvey had heard about the petition to withdraw from the Union. Harvey said he had, but did not want to withdraw because he was for the Union. Harvey suggested that the conversation end. Fairley agreed and sent him back to work.[2]

Fairley's questioning of Harvey's union sentiment was not accompanied by any assurance against reprisal if the answer revealed a prounion attitude. I also noted that Fairley's questioning of Harvey was part of a pattern of interrogation, accompanied in some instances by threats of economic reprisal if the Union's campaign succeeded, and other unlawful attempts to persuade employees to abandon the Union. Against this backdrop, I find that by Supervisor Fairley's interrogation of Harvey on February 17, regarding the latter's attitude toward the Union, the Company violated Section 8(a)(1) of the Act. *Parma Industries*, 292 NLRB 90, 99 (1988).

However, contrary to the General Counsel's contention, I find that Fairley's question regarding whether Harvey was aware of a petition to withdraw from the Union did not constitute solicitation of withdrawal of support from the Union. Fairley did not offer to make the petition available to Harvey. Nor did he suggest that Harvey sign the petition. I shall recommend dismissal of the allegation that Fairley addressed an unlawful solicitation to an employee on February 17.

Employee Douglas Griffith, employed by the Company since November 1987, supported the Union. During the organizing campaign, he wore a union button at work. In the frist or second week of March, after Griffith had begun to wear the union button, his supervisor, Charles Fairley, invited him and employee Vincent Echols to Fairley's office. After Griffith and Echols had seated themselves in his office, Fairley asked how they felt about the Union. Griffith responded favorably toward the Union.

Fairley stated that the union campaign was displeasing the man who was financing the Company. Fairley noted that the Company was not showing a profit and that this circumstance also displeased the man, who was continuing to support the Company because of its president, Kelly Dier.

Fairley slid some preprinted slips of paper toward Griffith and Echols, saying that by signing them, the employees would remove their names from the Union's petition. Griffith said that he had made up his mind about the Union, but if he decided to, he would come back and sign it. Echols asked if he could take the form with him and sign it later, if he changed his mind. Fairley refused Echols' request.

In the course of the discussion, Fairley remarked that the Union posed a threat to the Company's security. He said that it was possible that the Company might shut down if the Union came in.[3]

Fairley's questioning of employees Griffith and Echols regarding their attitudes toward the Union occurred in a coercive context. Thus, after asking them how they felt about the Union, Fairley solicited their signatures on documents announcing their abandonment of the Union, and warned them of an economic reprisal at the Company's hands, if the Union's campaign succeeded. Fairley's warning of plant closure carried with it the specter of job loss, and thus was likely to cause employees to abandon their right under Section 7 of the Act, to support a labor organization seeking to represent them as their collective-bargaining agent. Further, Fairley's supervisory status, and the location of the discussion in his office, gave added impetus to his solicitation of Griffith's and Echols' withdrawals from the Union's cause, and added to the coercive atmosphere surrounding the interrogation. Therefore, I find that by Fairley's attempt to persuade Griffith and Echols to abandon the Union, his warning of plant closure, and his questioning of the two employees regarding their sentiment toward the Union, the Company violated Section 8(a)(1) of the Act.

On February 17, Eddie Booth, a welder with 10 years in the Company's employ, signed a petition supporting the

[2] I based my findings of fact regarding Harvey's conversation with Supervisor Fairley on February 17, upon Harvey's credible testimony. Fairley did not deny having a conversation with Harvey on February 17, and asking him about his sentiment toward the Union. Nor did Fairley deny asking Harvey if he knew about a petition to withdraw from the Union.

[3] I based my findings regarding the meeting between Fairley, Griffith, and Echols, upon Griffith's testimony. Fairley did not deny questioning Griffith and Echols about their sentiments toward the Union. Nor did Fairley deny warning them of plant closure if the Union's campaign succeeded. Instead he testified that at some point in time, Echols came to him and asked about a form to remove his name from the Union's petition, that Echols signed a slip, and said he would send Griffith to Fairley, and that Griffith appeared later, on the same day and asked about the slip. However, I noted that Griffith, who at the time of the hearing was in the Company's employ, appeared to be earnestly searching his memory as he provided details of this incident. In contrast, Fairley did not seem conscientious about providing his best recollection. He did not make an effort to fix the time of Griffith's and Echols' visits to him regarding the withdrawal slips. Fairley did not present the assertedly signed slip to corroborate his testimony. Nor did he disclose its fate. Finally, withdrawal of support from the Union would have been a logical topic to accompany Fairley's interrogation and threat of plant closure.

Union. During the ensuing campaign, Booth was an active and open union supporter.

On March 3, Booth was in Supervisor Fairley's office. Fairley asked Booth how he felt about the Union. Booth replied that he had signed a petition and intended to do all he could to ''get it in the plant.''[4]

Fairley's question regarding Booth's union sentiment occurred in circumstances similar to those surrounding his interrogation of employee Harvey on February 17. Accordingly, for the reasons stated above, in analyzing his interrogation of Harvey, I find that Fairley again violated Section 8(a)(1) of the Act, when he questioned Booth on March 3.

James Riley, a welder with 15 years' employment with the Company, signed a petition for the Union in March. He attended three union meetings and was an outspoken union advocate.

On March 10, he had a conversation with his supervisor, Charles Fairley, in the latter's office. Fairley asked how Riley felt about him as a supervisor. Riley said he liked Fairley as a foreman.

Fairley turned the conversation to the Union. He asked Riley how he felt about the Union. Riley answered, in substance, that because of the way the employees had been treated, correction was needed. Riley said he was for the Union because the Company had reduced his wages due to a misunderstanding about some welding wire.

Replying to Riley, Fairley warned that the Union was ''no good'' and only wanted his money. Fairley said he could help Riley more than the Union could, adding that if Riley would give him a chance, he would talk to Acting Plant Manager Bob Schimel about restoring Riley's wages.

Fairley then reached into his desk and removed a printed form which he offered to Riley for his signature. The form was addressed to Hubert Coker, an official of the Union, and stated: ''I want my name removed from any documents I signed with your union. This letter serves as notice of my cancellation of authorization.'' Riley signed the form and returned it to Fairley.[5]

After asking Riley to reveal his sentiment toward the Union, Fairley attempted to pressure him into abandoning the Union. Fairley offered the possibility of a wage increase and promotion to welder class A in exchange for Riley's abandonment of the Union. I find that by questioning Riley in this context, Fairley interfered with, restrained, and coerced him in the exercise of his right under Section 7 of the Act, to support the Union. I also find that Fairley unlawfully impaired Riley's statutory right to engage in union activity by offering to seek a wage increase for him and an enhancement in his welding grade, in exchange for Riley's signature on a form announcing withdrawal of his support from the Union. By each of these intrusions into Riley's rights to support and to actively assist the Union, the Company violated Section 8(a)(1) of the Act.

In the summer of 1989, while at a drill, at a National Guard Armory, employee King Simmons approached Supervisor Fairley, who, at the time, was a lieutenant in the Army National Guard, and asked his opinion of the Union. Without expressing his opinion, Fairley turned the question around. Simmons answered that he knew how things were without a union and that he would support it.[6]

The issue raised here is ''whether under all the circumstances, the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act.'' *Rossmore House*, 269 NLRB 1176, 1177 (1984). In addressing this issue, I noted that the conversation began with employee Simmons' request for Fairley's opinion of the Union. I also noted that the conversation took place away from the Company's plant, during nonworking hours. Finally, Fairley did not accompany his question with any threat of reprisal, promise of benefit, or solicitation of Simmons' withdrawal of support from the Union. These factors were enough to insulate Fairley's question from the coercive effect of the Company's violations of the Act during its 1989 antiunion campaign. I find, therefore, that the General Counsel has not shown by a preponderance of the evidence, that the Company violated Section 8(a)(1) of the Act by Fairley's question to Simmons regarding his attitude toward the Union. I shall, therefore, recommend dismissal of the allegation that the Company violated Section 8(a)(1) of the Act, when Fairley engaged in interrogation in the summer of 1989.

The Company employed Jackie Wayne Owens as a welder from February 18, 1985, until it laid him off on September 18.

Beginning in February, Owens actively supported the Union at the Company's Collins plant. He signed the Union's petition, handbilled at the plant's gate, attended union meetings, spoke to several fellow employees in support of the Union, and wore union buttons. He also wore a T-shirt bearing the legend ''Union Jobs With Justice.''

At the beginning of March, his supervisor, Charles Fairley, invited Owens to leave his work station on the body line, and go to Fairley's plant office. After they had arrived at his office, Fairley asked Owens how he felt about the Union. Owens said that he was ''trying to get the facts from both sides.''

The discussion continued: Fairley remarked that he had been in a union and that the only thing a union accomplished for him was to take his money. Fairley also said that the Union would not provide food for the table. Fairley sug-

[4] I based my findings regarding employee Booth upon his credible and uncontradicted testimony.

[5] I have credited Riley's testimony regarding his employment, his union activity, and his account of his conversation with Fairley on March 10. Fairley admitted that he conversed with Riley about the Union in March. However, Fairley seemed reluctant to fix a date for the conversation. Fairley also conceded that he discussed Riley's loss of wages and his quest for a class A welder's rating. However, Fairley seemed reluctant to provided details about what he said to Riley about the withdrawal form, particularly with regard to its source. Nor did Fairley identify the source of the form in his testimony before me. However, he did not deny that he furnished it to Riley. Of the two, Riley impressed me as the more open and forthright witness.

[6] King Simmons' testimony regarding his conversation with Fairley consisted of his recollection that at sometime in the summer of 1989, Fairley asked him how he felt about the Union and that he answered as I have recited in my findings of fact. Simmons did not remember when or where this incident occurred, except that it was in the summer. Nor did he remember that anything else was said. However, Simmons' incomplete recollection of the circumstances in which the conversation occurred cast doubt on his recollection that the only words which passed between him and Fairley was the latters' question regarding his attitude toward the Union. As Fairley seemed to be testifying about the location of the conversation, and Simmons' question, in a forthright manner, I have credited these elements of his testimony. However, Fairley's version of Simmons' answer contained an uncomplimentary reference to the Union, which would have been unseemly, in the context of Simmons' favorable attitude toward the Union. As Simmons seemed certain of the content of his response, I have credited his version.

gested that supporting the Union would be futile. He said the Company would not execute a contract with the Union.

Offering a slip of paper to Owens, Fairley suggested that the employee sign it to remove his name from the Union's petition. Fairley warned that if Owens did not sign the slip, his name would go into a computer. Thus, his prounion attitude would become widely known, and no one would hire him. Owens took the slip, which was identical with the one received by employee Riley, and left Fairley's office.

On the following day, Owens returned to Fairley's office, after having signed the slip. As he returned the signed withdrawal form to Fairley, Owens asked who would see it. Fairley assured him it would be confidential and would be seen only by Fairley and Hob Schimel, the acting plant manager.

Fairley sought to enlist Owens as a spy for the Company in its effort to resist the Union. He instructed Owens to act as if he were supporting the Union, attend union meetings, and report what had happened to Fairley. Fairley also asked Owens to urge other employees to withdraw their support from the Union.

Fairley told Owens that a leadman type job was opening up. Fairley continued, saying that as Owens had signed the withdrawal form, he, Fairley, had recommended Owens for the job. Fairley also said he saw no reason why Owens should not obtain the job, as he had withdrawn his name from the Union's petition.

One day later, Fairley called Owens into his office and asked about a union meeting which had occurred on the previous evening. Owens had not attended, and did not know what had happened at the meeting. Fairley told Owens to ask someone who had been to the meeting, and report back to him.

On the morning of April 5, after handbilling at the plant, Owens took one of the fliers to Fairley's office and showed it to him. The handbill spoke of a debate between the Company and the Union. After reading the handout, Fairley remarked that the Company wanted to talk to the employees rather than to the Union. He also stated, in substance, that if the Union won the election, the Company would shut the Collins plant down.

Nine days later, Fairley came to Owens' work station, on the body line, and told him to look for another job. In the ensuing discussion, Fairley said that Owens' ''bull shit days'' at the Company were over. He also said, in substance, that as Owens was unhappy with the Company and wanted the Union so much, he should seek other employment.[7]

The context in which Fairley asked Owens to disclose his sentiment toward the Union was full of hostility toward union activity. Fairley was pursuing an antiunion campaign, which included unlawful interference, restraint and coercion. During February and March, Fairley repeatedly questioned employees about their attitude toward the Union. Also, during the same period, he threatened employees with economic reprisals if they selected the Union as their collective-bargaining representative. Further, he solicited their withdrawal of support from the Union. Indeed, I have found that by this conduct toward other employees during February and March, the Company violated Section 8(a)(1) of the Act. I also noted that Fairley used his office as the situs of his interrogation of Owens, whom he supervised.

Fairley also accompanied his question to Owens with unlawful conduct. For, when he questioned Owens in early March, Fairley violated Section 8(a)(1) of the Act by soliciting his withdrawal of support from the Union, by seeking to obtain the withdrawal with the threat of putting Owens' name on a widely publicized list of prounion employees, which would impair his employment opportunities, and by telling him that supporting the Union was futile, as the Company would never execute a contract with the Union. I also find, therefore, that by asking Owens how he felt about the Union, Fairley impaired the employee's statutory right to support the Union, and thereby violated Section 8(a)(1) of the Act.

I find that Fairley violated Section 8(a)(1) of the Act, by giving the impression that the Company was keeping its employees' union activity under surveillance. He did so first by asking Owens to engage in espionage on the Company's behalf, and again, by pressing Owens to ask another employee about what happened at a union meeting.

Fairley also violated Section 8(a)(1) of the Act, when he held out the possibility of promotion to Owens as a reward for having withdrawn his support from the Union. I find that by offering this reward, Fairley was seeking to ensure against renewal of Owens' support for the Union.

Turning to April 5, I find that Fairley threatened Owens and his fellow employees with an economic reprisal if they selected the Union as their collective-bargaining representative in the scheduled Board election. I also find that the Company, by that threat, restrained, coerced, and interfered with its employees in the exercise of their right under Section 7 of the Act, to support a union for the purpose of collective bargaining, and thereby violated Section 8(a)(1) of the Act.

By his remarks to Owens on the morning of April 14, Fairley conveyed the message that support for the Union and continued employment by the Company were incompatible. Thus, Fairley was threatening discharge as a reprisal for Owens' union activity. I also find that Fairley's remarks on that occasion were coercive and therefore violated Section 8(a)(1) of the Act. *Rolligon Corp.*, 254 NLRB 22 (1981).

In March, Fairley told employees in the plant cleaning area, that slips to withdraw names from the Union's petition were available in his office. In passing, Fairley said that the employees did not need a union. He also warned that if the employees had a union, they might have less; their pay rate might be more or less; their benefits might be less, and if work slowed down, the Company would make them punch out and go home. Finally, Fairley asked Barnes what he thought of the Union.[8]

[7] Fairley testified cautiously. He seemed reluctant to try to remember the dates or approximate time when incidents occurred. Instead of providing a month or week or other approximation in reference to the scheduled election, Fairley testified that he could not remember when the incident occurred. He also seemed reluctant to disclose that he was the source of the withdrawal form, which Owens obtained in March. Finally, when testifying about conversations, he seemed, for the most part, reluctant to provide their content.

In contrast, Owens testified more openly. He seemed to be giving his full recollection of events and conversations. Accordingly, where Owens' and Fairley's testimony conflicted, I have credited Owens. I have also credited Owens' testimony regarding his employment and union activity.

[8] Fairley denied that he ever had any discussion with George Barnes about the Union. He also denied that he talked to Barnes about signing a slip to get out of the Union. However, of the two, Barnes was more conscientious about searching his memory. Further, Barnes seemed to be more at ease as

I find that Fairley's remarks to the employees in the plant cleaning area included threats of economic reprisals if a union represented the Company's employees as their collective-bargaining representative. Fairley's threat extended to wage reductions, benefits, and layoffs. I find that by Fairly's threats, the Company violated Section 8(a)(1) of the Act.

Fairley's announcement that forms were available in his office, by itself would not constitute solicitation of employees to cancel their support for the Union. However, with the addition of Fairley's threats of economic reprisal and his remark that the employees did not need a union, the announcement became a solicitation of withdrawal of support from the Union. Such a solicitation by a supervisor is coercive and impairs the right of employees to support a labor organization under Section 7 of the Act. I find that by Fairley's solicitation of employees to execute forms announcing their withdrawal of support from the Union, the Company violated Section 8(a)(1) of the Act.

By asking Barnes to disclose his sentiment toward the Union, Supervisor Fairley again engaged in unlawful conduct. This question came in the wake of Fairley's unlawful threats of economic reprisal and his unlawful solicitation of employees' signatures on forms for withdrawing support from the Union. I find, therefore, that Fairley coerced Barnes by asking him what he thought about the Union. I also find that by Fairley's question, the Company violated Section 8(a)(1) of the Act.[9]

2. Moisy Price

Joseph Hicks, a maintenance electrician, who has worked for the Company since July 1983, actively supported the Union's preelection campaign. He signed a petition supporting the Union, handbilled, wore prounion buttons and a union badge, encouraged other Company employees to join the Union, and was on the Union's committee.

On February 21, Hicks' supervisor, Moisy Price, approached him in the plant's maintenance stockroom, and began to talk about the Union. Price warned that if the Union campaign succeeded, Hicks could be fired or laid off. Price also said that if the Union came in, Hicks might also lose overtime work and holiday pay, and the plant might close.

Two days later, in the plant, in the presence of employees Hicks and Jimmy Mooney, Supervisor Price announced that he had received some papers from Bob Schimel which, if signed by an employee, would announce that the signatory was abandoning the Union. As Price put the papers into a desk drawer, Hicks asserted that he was undecided, and would let Price know.

Two days later, at the plant, in the presence of another employee, Price asked Hicks if he was ready to sign the withdrawal form. Price remarked that the form would be in his desk, whenever Hicks decided to sign it.

On April 17, at the plant, in the presence of two other employees, Moisy Price came to Hicks and asked him where he stood on the Union. Price said he had to know whether Hicks was ''union or non-union.'' Hicks replied that he was undecided. When Price pressed him further for an answer, Hicks said he would answer upon returning from funeral leave.[10]

I find that Supervisor Price's remarks on February 21, though stated as his ''point of view,'' came from a member of the plant's management, who probably heard the Company's expressions of intent. Thus, as Hicks listened, he heard that the Union's success in organizing the plant would provoke the Company to discharge him, or lay him off, cut his overtime hours, eliminate his holiday pay, and, possibly, close the plant. I find that by these threats, Supervisor Price sought to coerce Hicks into surrendering his right under the Act to support the Union. Therefore, I find that by Price's threats, the Company violated Section 8(a)(1) of the Act.

I also find that by offering a withdrawal form to Hicks on February 23 and again on March 10, Price was again trying to coerce him into abandoning the Union. I find that by Price's solicitation of Hicks' withdrawal from the Union, the Company again violated Section 8(a)(1).

Supervisor Price engaged in coercive interrogation on March 10, when he asked Hicks if he was ready to sign a withdrawal form. For, by his question, Price was asking Hicks about his union sentiment. In posing that question while unlawfully soliciting Hicks' withdrawal from the Union, and against the background of unlawful threats of economic reprisal if the Union's campaign succeeded, I find that Price violated Section 8(a)(1) of the Act.

Similarly, I find that Supervisor Price coercively interrogated Hicks on April 17. On that occasion, he again asked Hicks to disclose his attitude toward the Union. The backdrop of union animus, which was present on March 10, persisted on April 17. Price's insistence on an answer aggravated the coercive effect of his questioning of Hicks' union sentiment. Accordingly, I find that by questioning Hicks about his union sentiment on April 17, the Company violated Section 8(a)(1) of the Act.

On the morning of April 5, employee Jackie Owens encountered Supervisor Price in Supervisor Charles Fairley's office. Owens arrived after handbilling for the Union, and offered a copy of the handout to Fairley. After Fairley commented, Price joined the discussion. Price asked Owens if he wanted his job. Owens answered yes. Price told Owens that he had ''better leave the union stuff alone.''[11]

Price's warning to Owens was clear. If Owens wished to remain in the Company's employ, he should cease his union

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he testified on both direct and cross-examination. Therefore, I have credited Barnes' account of Fairley's remarks in the plant cleaning area in March.

[9] Par. 7(b) of the complaint alleged that ''on March 3, the frist or second week of March, and March 10, 1989,'' Charles Fairley solicited company employees ''to sign a document cancelling their authorization for the Union to act as their bargaining representative.'' The complaint did not allege that in his remarks to Barnes and other employees in the plant cleaning area, in March, Fairley violated Section 8(a)(1) of the Act by threats or interrogation. However, Barnes testified about the threats and interrogation. Further, Fairley denied that he spoke to Barnes about the withdrawal forms or about the Union, or that he interrogated Barnes about his attitude toward the Union. Thus, I find that the issues of fact regarding the asserted threats and interrogation were fully litigated before me. Also, Barnes' testimony showed that my findings that the threats and the questioning of Barnes regarding his attitude toward the Union were unlawful, are closely related to the solicitation alleged in the complaint. Therefore, in accordance with Board policy, I have found that the threats and interrogation, referred to in Barnes' testimony, violated the Act, even though the complaint did not include such allegations. *Sunbeam Corp.*, 287 NLRB 996, 998 fn. 8 (1988).

[10] I relied on Hicks' credible and uncontradicted testimony in making my findings of fact regarding his conversations with Supervisor Price, who did not testify.

[11] Contrary to Owens' testimony, Supervisor Fairley denied that Supervisor Price threatened Owens with loss of his job if he continued to engage in union activity. Price did not testify. However, for the reasons stated in fn. 7, above, I have credited Owens' testimony regarding his encounter with Supervisor Price on April 5.

activity. By this implied threat of discharge if Owens continued to support the Union actively, Price sought to coerce him into abandoning his statutory right to assist a labor organization. I find that by Price's threat to Owens, the Company violated Section 8(a)(1) of the Act.

I find from the testimony of George Barnes, that in March, at the plant, Supervisor Price asked him what he thought about the Union. In light of the Company's resort to discrimination and other unfair labor practices to eradicate the Union's support among its employees, I find that Price's question was coercive. Accordingly, I find that by Price's question to Barnes, the Company violated Section 8(a)(1) of the Act.

3. Douglas Sanford

On three occasions, Company Supervisor Douglas Sanford suggested the futility of the employees' support for the Union's effort to become their collective-bargaining representative. The first occurred, when Supervisor Sanford approached employee James Edmon Jr. at the plant, on March 1, and conversed with him about the Union. In the course of the exchange, Sanford said ''it would be good if the guys would stick together, but they are not going to stick together, and even if they did go along with it, Kelly Dier would never go along with the Union.'' At the time Sanford spoke, Dier was the Company's president. On March 3, Sanford told employees Eddie Booth and John Johnson that the Company would never have a union. When Booth asked why, Sanford answered that ''Kelly Dier won't ever sign a contract.'' In the third incident, on April 5, Sanford told employee Jackie Owens, that the Company would never sign a contract with the Union and would not agree to anything.[12]

I find that by telling employee Edmon that the Company's president ''would never go along with the Union,'' Supervisor Sanford was creating the impression that it would be futile for the employees to select the Union as their collective-bargaining agent. Edmon was likely to gather from Sanford's remark, that when Kelly Dier refused to accept the Union as his employees' bargaining agent, there would be no bargaining between the Company and the Union. According to Sanford's remark, Dier would refuse to bargain, even if all of the Company's employees supported the Union. By thus telling employee Edmon that it would be futile for the Company's employees to support the Union as their collective-bargaining representative, Sanford violated Section 8(a)(1) of the Act. *Jones Plumbing Co.*, 277 NLRB 437, 440 (1985).

Sanford's remarks to employees Booth and Johnson, on March 3, and to employee Owens on April 5, also painted pictures of futility confronting the employees if they insisted on selecting the Union as their collective-bargaining agent. I find that by those remarks, the Company violated Section 8(a)(1) of the Act.

On March 7, Supervisor Sanford approached employee Edmon, at the plant. Sandford offered to him a copy of the withdrawal form previously quoted, at p. 5, which stated, in substance, that the signatory employee was removing his or her signature from any document he or she had signed for the Union, and canceling the Union's authorization to act as his or her representative. Sanford urged Edmon to sign the form, stating that no one but Edmon and Sanford would know that he had signed it. Sandford furnished the address to which Edmon was to send the signed form. Edmon folded it and put it into his pocket.[13]

I find that by pressuring Edmon into signing a withdrawal form stating that he no longer supported the Union, Sanford attempted to coerce him into surrendering his statutory right to choose a labor organization to represent him and his fellow employees for purposes of collective bargaining. I also find, therefore, that by this conduct, the Company violated Section 8(a)(1) of the Act. *Adair Standish Corp.*, 290 NLRB 317, 318 (1988).

4. Steve Wise

At the Company's plant, on February 20, at the end of a break, employee Dennis W. Irwin, an active union supporter, told Supervisor Steve Wise that, despite his strenuous support for the Union, he, Irwin, wanted their friendship to continue. Wise responded, warning that ''they would close the plant if the Union came in.[14]

On April 5, Irwin was in a group of about 30 employees at a meeting at the plant. Also present were Jerry Keel, who was a vice president of the Company's parent, Acting Plant Manager Bob Schimel, and Supervisors Moisy Price and Steve Wise. Keel conducted the meeting in which the subject of plant closing arose. Someone asked Keel to comment on a remark by a member of management, that if a union came in, the Company would close the Collins plant. Keel answered ''Well, if someone in management said that, then they are wrong.'' He asserted that the Company's parent had ''two union operations'' and both were ''going.'' Keel stated that the Company's parent had lost an election at its Birmingham operations, but did not close it. He added: ''[J]ust because a union comes in, doesn't mean we would close the plant down.''

Following Keel's remarks, employee Irwin stated that Supervisor Steve Wise had warned that the Company would close its plant if the Union succeeded in its campaign. Wise disputed Irwin's assertion, but admitted telling Irwin that the plant might close if the Union came in. In his testimony, Keel admitted that in responding to Irwin's rendition of Wise's remark, he said that ''if we lost the election here, that doesn't mean, to set the record straight, that certainly the plant would shut down.''

I find that Supervisor Wise's warning on February 21 was as stated in Dennis Irwin's credited testimony. Wise's warning was a threat of Company retaliation, issued to coerce a listening employee into abandoning the Union.

I also find that Keel's remarks on April 5 did not erase the coercive impact of Wise's threat. Initially, Keel assured his listeners that a union's success in organizing the Company's employees would not necessarily cause the closing of its plant. However, Keel left open the possibility of plant closure if the Union organized the Company's employees, when he responded to Irwin. In short, I find that Vice President Keel's response to Irwin suggested that by supporting the

[12] Supervisor Sanford did not testify in this proceeding. I based my findings of fact regarding Sanford's remarks about the Company's attitude toward the Union, on the credible testimony of employee Eddie Booth and former company employees James Edmon Jr. and Jackie Owens.

[13] I based my findings of fact regarding Sanford's solicitation of Edmon's withdrawal of support from the Union on the latter's uncontradicted testimony.

[14] Supervisor Wise did not testify before me. I based my findings of fact regarding Wise's remarks on employee Irwin's testimony.

Union, the employees were risking their jobs. By making that suggestion to the Company's employees, he impaired their right under the Act to assist the Union. In sum, I find that by Wise's warning on February 21 and Keel's implied threat on April 5, the Company violated Section 8(a)(1) of the Act.[15]

5. Johnny Kirkley

At the end of March, at the Company's plant, Supervisor Johnny Kirkley conversed about the Union with employees Donald (Shorty) Sanford and Jackie Owens. In the course of the discussion, Kirkley said that ''Fontaine would never sign a contract with the Union.''[16]

By his remark, Kirkley implied that supporting the Union was an exercise in futility. There would be no point to selecting the Union as the employees' collective-bargaining representative, if the Company's predisposition was to refuse to sign any contract with it. I find that by Kirkley's remark to Sanford and Owen, the Company violated Section 8(a)(1) of the Act.

6. Bob Schimel

Former employee George Barnes testified that in March, Schimel told a meeting of employees, at the plant, that because of union activity, the Company would not grant any raises or bonuses. Barnes could not recall anything else that Schimel may have said at that time.

According to Jackie Owens, in mid-March, at a meeting, at the plant, attended by employees Eddie Roy, George Barnes, Jackie Owens, and others, Acting Plant Manager Bob Schimel talked about a bonus. Owens also testified that Schimel told the employees that he could not give a bonus to them because of their union activities, and that had he granted a bonus, the Union would have filed an unfair labor practice charge against the Company.

Former company employee Carl Hudson testified that during the first 13 days of April, Schimel held a second meeting with between 15 to 25 Company employees, at the plant. According to Hudson and George Barnes, in answer to a question from an employee, Schimel told the assemblage, in substance, that they would not receive raises or bonuses from the Company because union activities were going on.

Reflecting on the testimony of Barnes, Owens, and Hudson, I noted infirmities which cast doubt upon its reliability. According to Barnes, at a meeting with 15 or 16 employees, Schimel's only remark was an answer to a question by an employee. Barnes did not appear to be searching his memory for more details regarding this meeting. At first, Owens testified that Schimel said he could not give a raise to the employees. When counsel prompted him, he quickly changed his testimony, stating that Schimel referred specifically to a bonus. Hudson's memory was sketchy and selective. None of the three testified with confidence. In sum, they were not convincing witnesses regarding Schimel's remarks.

On direct examination, Schimel denied that he told employees that the Company was withholding bonuses and wage increases because of union activity. He also testified that he told the Company's employees, on numerous occasions during the Union's campaign, that the Company could not make any adjustment in their wages ''as long as we were within the campaign, that we had to wait until the resolution of the campaign and if the Union won the election, then the wages would be part of the contract.'' Schimel also testified that in the same discussions, he told the employees that ''if the Company won the election, we would continue our review and make a disposition at that point.'' I have credited Schimel's version of his remarks, which he gave in a forthright manner.

Schimel's remarks to the Company's employees during the preelection campaign, regarding wages, suggested that an increase was more likely if the employees rejected the Union. According to Schimel, if the Company won the election, it would proceed with a current review of its employees' wages and make adjustments. If the Union won, the Company would not proceed with its wage review. Thus, the Company would stop its effort to determine what if any wage increases would be appropriate for its employees. Schimel was implying that the price for the Company's willingness to proceed with its wage review was rejection of the Union by the employees. I find, therefore, that Schimel's remarks violated Section 8(a)(1) of the Act. *Blackstone Co.*, 258 NLRB 945, 948 (1981).

7. Jerry Keel

Vice President Jerry Keel, of the Company's parent corporation, held a meeting with the body line employees, at the Collins plant, on April 5. Among the topics he discussed with the assembled employees, were bonuses and incentive raises. Keel told the employees that the Company could not give them raises or bonuses or change classifications or work rules, as long as the union campaign was going on. He also stated, in substance, that if the Company granted wage increases or bonuses during the union campaign, they would be seen as an attempt to pressure employees to vote against the Union.

During the same meeting, employee Donald McRaney asked Keel why the Company had granted a wage increase to its office employees and had not done so for its plant employees. Keel replied: ''Why should we penalize those people? They are not in the union campaign. We will go ahead with normal procedure. Whatever normal procedure is.''[17]

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[15] The complaint did not allege that Vice President Keel's remarks violated Sec. 8(a)(1) of the Act. However, the facts regarding Keel's remarks were fully litigated. Indeed, my findings in this regard flowed from his testimony. Further, Keel's implied warning was closely related to Wise's threat, which the complaint included among its allegations. Accordingly, in keeping with established Board policy, I considered Keel's remarks and determined that they included an unlawful threat.

[16] In his testimony, Kirkley denied telling Owens and Sanford that the Company would never sign a contract with the Union. On cross-examination, when asked to recount what he had said about the Company signing a contract, he answered: ''I probably made a statement that it was unlikely that we would, according to past history, because there had been two or three other attempts at Fontaine and nothing ever—you know, no contracts were ever signed there, that I can recall.''

Kirkley's use of ''probably'' to introduce his testimony, severely diminished its reliability. He also seemed uncertain as he offered the quoted testimony.

In contrast, Jackie Owens testified about Kirkley's remarks in a self-assured manner, and seemed to be providing his recollection in a candid manner. Accordingly, I have credited Owens testimony regarding Kirkley's remarks.

[17] I based my findings of fact regarding Keel's remarks to the employees on April 5, on his and employee Dennis Irwin's testimony. Of the witnesses, who testified about those remarks, Keel and Irwin were the most conscientious about providing detailed recollections, and did so in a forthright manner, on direct and on cross-examination.

The Board has recognized that an employer's assertion to its employees that it is withholding a wage increase or other benefits because of a union's organizing campaign among them and the risk that the employer would violate the Act if it granted such an increase, is violative of Section 8(a)(1) of the Act. *Sunbeam Corp*., 287 NLRB 996, 1007–1008 (1988). For such remarks suggest that the employer is punishing the employees because they are engaged in union activity. Here, Vice President Keel's remarks, as found above, included such a suggestion, when he explained why the Company could not grant wage increases or bonuses to the plant employees. Keel amplified the suggestion of punishment, when he answered employee McRaney's question regarding the office employees. I find, therefore, that by Keel's remarks, the Company violated Section 8(a)(1) of the Act.

8. Kelly Dier

At a meeting of the plant employees, on April 13 or 14, at the Collins plant, the Company's acting president, Kelly Dier, explained that after the Union had organized the plant, he would wait for the employees to get rid of it. Then, according to Dier's remarks to the employees, the Company would grant a wage increase, and the employees could get back to work. Dier also asserted, in substance, that the Company had granted wage increases to nonplant personnel because they were not involved with the Union.[18]

During the summer, Kelly Dier addressed another meeting of Company employees. He spoke about incentive wage increases. He recognized that the employees were dissatisfied with existing incentive rates and said he intended to improve them. Dier remarked that he did not know whether it would be 3 or 5 percent, but he had decided to do something. He said, however, that due to the union activity, he could not grant any raise to the plant employees and must wait ''until the union matter [is] settled.''[19]

I find that Kelly Dier's remarks to the plant employees in April, was an attempt to drive a wedge between the employees and the Union by offering the employees a wage increase if they disavowed the Union. In his summer remarks, Dier blamed the Union and union activity for his decision to withhold incentive rate increases. He also suggested that if the employees rejected the Union and ceased their union activity, the increases would be forthcoming. In both instances, Dier impaired the rights of his employees, under Section 7 of the Act, to support a union and engage in union activity. I further find, therefore, that by Dier's remarks, the Company violated Section 8(a)(1) of the Act.

9. The rule forbidding employees from talking about the Union

On April 14, 1 day after the Regional Director had postponed the scheduled representation election at the Company's plant, Supervisor Doug Sanford imposed a new rule regarding talking at work. Sanford told employee James Edmon Jr., and other employees on the second shift, that they could talk about the Union on their own time, during breaks or lunch, but not while they were working.[20]

Supervisor Steve Wise introduced the new rule at a meeting with employees, at the Company's plant, on the morning of April 14. I find from employee Donald McRaney's uncontradicted testimony, that Wise declared:

> [W]e have a lot of work to do; we have to put all the union talk behind us now, and there won't be any more talking about the union unless it is before work, during our breaks, or after work.

On April 18, Supervisor Charles Fairley told a group of the Company's body line employees of a new rule regarding talking about the Union during working hours. He said, in substance, that the union campaign had failed, that ''politics'' were ''over'' and that if he heard further discussion about the Union while the employees were working, he would deal with them ''accordingly.[21]

It is well settled that an employer violates Section 8(a)(1) of the Act by implementing a rule prohibiting employees from discussing union matters, while permitting them to discuss other matters. *Turnbull Cone Baking Co. v. NLRB*, 778 F.2d 292, 296 (6th Cir. 1985). I find, therefore, that the Company violated Section 8(a)(1) of the Act, when Supervisors Sanford, Wise, and Fairley implemented a rule prohibiting employees from discussing the union while working.

C. *Alleged Discrimination*

1. Jackie Owens' warning

On April 14, employee George Barnes, who worked elsewhere in the plant, came to Jackie Owens, who was welding on the body line, and asked a favor of him. Barnes asked Owens to accompany him when he took his wife to a hospital, in Jackson, Mississippi, after work.

As Owens began to answer, Supervisor Fairley came up and summoned Owens to his office. Owens went with Fairley, who scolded him. Fairley complained that Owens insisted on having his way and that must stop.[22]

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[18] Kelly Dier did not testify. I based my findings regarding Dier's remarks to the April meeting of the Company's plant employees, on Jackie Owens'testimony.

[19] I have based my findings regarding Dier's remarks at the summer meeting with company employees, on employee King Simmons' detailed and authentic sounding testimony. Dier did not testify. Instead, Supervisor Bob Schimel denied that Dier talked about wages or bonuses during the meeting on April 13 or 14. However, I noted that Schimel had opportunity to present his recollection of Dier's remarks, but did not do so. This restraint contrasted with his earlier credited testimony, in which he seemed to be providing his full recollection in a frank manner. Therefore, I have not credited Schimel's denials.

[20] Supervisor Sanford did not testify. I based my findings regarding his imposition of the prohibition of talking about the Union, during worktime, on Edmon's uncontradicted testimony.

[21] My findings regarding Fairley's remarks to the body line employees were based on former employee Carl Hudson's testimony. Both on direct and on cross-examination, Hudson appeared to be giving his honest recollection of Supervisor Fairley's remarks.

On direct examination, without providing a specific date, Fairley gave a very condensed version of his remarks to his employees after cancellation of the representation election. According to Fairley, he ''spoke of getting back on productive type terms and stop the walking and talking.'' He did not explain his cryptic reference to ''walking and talking.'' Nor did the Company's counsel ask Fairley to define the ''walking and talking'' to which he referred in his talk to his subordinates. The timing of the stricture suggested that union activity during work time was the target of his remarks. In any event, Fairley's testimony did not include any denial of Hudson's more detailed version of Fairley's remarks.

[22] Fairley testified that on April 14, he ''warned Jackie several times about talking and going back to work, but he continued to talk.'' Fairley also testified that he had asked Owens not to talk ''on several occasions.'' In both instances, Fairley seemed reluctant to provide any details such as when and how often he had warned Owens.

Fairley wrote a warning for talking, but could not give a copy to Owens until later in the day. In his writeup, Fairley declared that ''all talking wag to be done during breaks.'' As he handed the warning to Owens, Fairley told him to ''be sure to show this to the union people.''

The General Counsel argued that Fairley issued the warning because of Owens' union activity. The Company urged dismissal of the allegation of discrimination against Owens, on the ground that there was no showing that the disciplinary warning issued to him constituted disparate treatment. I find, for the reasons stated below, that the warning to Owens was unlawful.

Section 8(a)(3) and (1) of the Act prohibit an employer from imposing a disciplinary warning on an employee to discourage membership in, or activity on behalf of a union. *Storer Communications*, 287 NLRB 890, 900 (1987). Where the record shows that opposition to union activity was a motivating factor in an employer's decision to take adverse action against an employee, involving his or her employment, the employer will be found to have violated the Act unless the employer shows that the adverse action would have been taken even in the absence of union activity. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 400, 403 (1983). Where the employer's explanation for its action are pretextual—that is, if the reasons either did not exist or were not in fact relied upon—the employer has not met its burden and the inquiry is logically at an end. *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982); *Wright Line*, 251 NLRB 1083, 1084 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

As shown above, at the beginning of the organizing campaign, Owens was an open and outspoken union advocate. In February, he signed the Union's petition. Owens also handbilled at the Company's gate. He wore five prounion buttons and a prounion T-shirt.

In March, Owens' conduct suggested that he had changed his mind about the Union. When Supervisor Fairley asked about his union sentiment, Owens replied that that he was trying to get the facts from both sides. Fairley gave a form to Owens, suggesting that he sign it to remove his name from the Union's petition. On the following day, Owens returned the signed withdrawal form to Fairley.

After obtaining Owens' signed withdrawal form, Fairley asked him to be a Company spy. Fairley instructed Owens to continue the appearance of being for the Union, to attend union meetings, and report what had happened there to Fairley. There was no showing that Owens carried out Fairley's instructions.

Owens continued to support the Union openly. He handbilled for the Union early on the morning of April 5. Before going to work, Owens took one of the handbills to Fairley. As found above, Fairley read the handbill and warned that the Company would shut the plant down if the Union won the pending election.

Shortly before 7 a.m., on April 14, Owens gave a union handbill to Fairley. The handbill announced the cancellation of the scheduled representation election.

Fairley's conduct on April 14, showed that he considered Owens to be a union supporter. As found above, on that morning, Fairley told Owens to look for another job, and strongly suggested that Owens' prounion sentiment was incompatible with his employment by the Company. As I have concluded above, Fairley's advice to Owens implied that if he did not quit, the Company would discharge him. Finally, while handing the warning to Owens, Fairley suggested sarcastically that he show it to the Union.

During February, March, and April, the Company repeatedly gave vent to its strong union animus. Coercive interrogation, solicitation of employees to abandon the Union, threats of economic reprisal, and other violations of Section 8(a)(1) of the Act, as found above, punctuated the Company's effort to discourage its employees from supporting the Union. Supervisor Fairley was a major participant in the Company's antiunion campaign, and contributed considerably to the list of its unfair labor practices. Significantly, Owens was a frequent target of Supervisor Fairley's attempts to discourage employees from supporting the Union.

The timing of Fairley's issuance of the warning to Owens lends further support to the General Counsel's contention. For this disciplinary notice came in the wake of Owens' handbilling on April 14, and Fairley's thinly disguised warning that Owens' job was in jeopardy because of his union activity.

In sum, I find that Fairley was aware of Owens' prounion sentiment on April 14, and that Fairley's hostility toward the Union and Owens' support for the Union had surfaced on and before that date, and had taken the form of a threat aimed at Owens' job. The timing of the disciplinary notice, on the very day on which Fairley had made that threat, provides the final element in the General Counsel's prima facie showing that Owens' persistent union activity provoked Fairley to punish him.

The Company argues in its brief that Owens received the verbal warning on April 14, because he violated a plant ban on talking during worktime. However, the Company's proffered explanation does not withstand analysis.

There was no showing that on or before April 14, the Company had promulgated any written prohibition against conversation on the plant floor between employees. Acting Plant Manager Schimel's testimony showed that during the 2 years preceding April 14, the Company was not concerned about conversations between employees who were at their assigned work stations. The problem confronting Schimel was ''getting the employees to stay in their own departments . . . .'' Schimel attacked this problem by introducing an unwritten rule that employees were to remain in their departments and discuss their work related problems with their supervisors, rather than seeking answers elsewhere in the plant. Schimel also testified that this policy would apply ''if a number of employees were getting together . . . .'' How-

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Fairley also testified that he decided to issue the verbal warning to Owens on April 14 because he ''wasn't getting his attention, so I needed to do something to grab Jackie's attention.'' However, Fairley's testimony did not include any account of an incident in which he caught Owens talking to an employee and admonished him about it. Instead, the record shows that prior to April 14, Fairley permitted Owens to argue with other employees, during worktime, about their doing work which Fairley had assigned to Owens.

The foregoing circumstances, and my impression that Fairley was not providing his full recollection of significant events and conversations in which he participated, cast doubt on the reliability of his testimony, where it conflicted with Owens'. For of the two, Owens seemed to be the more forthright. Therefore, I have rejected Fairley's version of his encounter with Owens on the afternoon of April 14, leading up to the issuance of the verbal warning to Owens.

ever, he was not asked about conversations between two employees, who were at their assigned work stations.

I find from Supervisor Fairley's testimony that he tolerated Owen's conversations with other employees near his work station, prior to the warning of April 14. On those occasions, Fairley observed Owens talking to other employees and understood that he was telling them what to do. According to Fairley:

> [W]hen something needed to be done that Jackie [Owens] could do, he wouldn't do it; he would go ask someone else to do it, or else stand around and argue with someone about why can't you do it, when I asked him to do something.

According to Fairley, such conversations were not violations of the Company's no-talking rule.

There was no showing that prior to April 14, the Company had issued any disciplinary warning, verbal or written, to any employee for conversing with another employee during worktime. In an effort to support its position that Owens did not suffer disparate treatment, the Company offered the verbal warning it had issued to employee Stephen Strebeck prior to the inception of the Union's campaign. However, I find that Strebeck's verbal warning does not) help the Company's defense. For the warning shows that the Company issued it to him not for a conversation during worktime, but for: ''Smart mouth failure to stay in work area. Roaming around in plant'' [sic].

The verbal warning to Owens on April 14, suggested that Fairley's attitude had changed toward him. Fairley's testimony showed that he had formerly permitted Owens to talk freely to employees about work. Fairley's warning enjoined Owens from any talking during worktime, and directed Owens to limit ''all talking'' to breaktime. I also noted from Fairley's testimony, that when he decided to write the warning, he neither knew nor cared what Owens and Barnes had been talking about.

I find that the Company has not rebutted the General Counsel's strong showing of unlawful motive. Thus, the Company has not explained Fairley's changed attitude toward Owens' talking. The Company has not shown that Fairley was enforcing a no-talking rule which it had promulgated or maintained prior to April 14. Finally, the Company has not shown that it had issued a warning for talking, prior to the one Owens received on April 14.

The record convinces me that Supervisor Fairley disciplined Owens on April 14 to discourage him from engaging in union activity or otherwise supporting the Union, and I so find. Accordingly, I also find that by this discrimination, the Company violated Section 8(a)(3) and (1) of the Act.

2. Withholding bonuses

The Company granted bonuses to its office employees and to its plant employees in 1987 and 1988. In each instance, when the Company announced the bonus, it held out a future bonus if the employees were productive. With the exception of 1982, when no increase or bonus was granted, the Company gave its plant and office employees wage increases annually from 1981 through 1986. However, the Company has not granted both a wage increase and a bonus in the same year, at least during the last 10 years.

The record did not show that the Company contemplated a 1989 bonus for its employees. Instead, I find from Bob Schimel's testimony that early in 1989, before the Union began its campaign, the Company was considering a wage increase for its plant and office employees. I also find from Schimel's testimony that in February, before the union campaign had begun, the Company had ''pretty well completed'' a wage survey. His testimony also showed that by the time the union campaign began, the Company had basically completed its survey, but had not decided what increase to give.

The planned wage increase played a role in the Company's antiunion effort. As found, on April 5, Company employee McRaney asked Vice President Keel why the Company had granted a wage increase to its office clerical employees and had not done so for the plant employees. In substance, Keel answered that inasmuch as the office employees were not involved in the Union's campaign, the Company did not intend to penalize them by withholding the wage increase from them.

I have found, that on April 13 or 14, President Dier encouraged support for the Company's effort, when he explained to his plant employees that after they had gotten rid of the Union, the Company would grant a wage increase to them. He also asserted, in substance, that the Company had given a wage increase to the nonplant employees because they were not involved with the Union. During the summer, Dier told a meeting of the Company's plant employees that he could not give them a wage increase ''until the union matter [is] settled.''

Acting Plant Manager Bob Schimel's remarks to the Company's employees during the preelection campaign suggested that a wage increase was more likely if the Union lost the election. As found above, Schimel stated, in substance, that there would be no wage adjustment for the plant employees as long as there was a union campaign. He also said that if the Company won the scheduled representation election, it would proceed with its wage survey. If the Union won, according to Schimel, the Company would cease in its effort to formulate a wage increase, and negotiate the matter with the Union.

The Company granted a wage increase to its office employees in March or April. In September, the Company granted a wage increase to its plant employees, retroactive to April 17.

The complaint alleged that the Company violated Section 8(a)(3) and (1) of the Act by withholding a bonus from its employees, on or about April 1. The General Counsel has not amended the complaint to allege the withholding of a wage increase, as the unlawful conduct. Nor did the General Counsel seek to amend the complaint before me. However, in her brief, counsel for the General Counsel abandoned the bonus and substituted the withholding of a wage increase as the alleged discriminatory conduct.

The Company denied the complaint's allegations, contending that union activity had nothing to do with the withholding of a bonus, or any wage adjustment. According to the Company, the record shows that it withheld a wage increase from the plant employees because it feared that granting it during the Union's preelection campaign might be unlawful, and also because management had not completed the wage survey for those employees. I find no merit in the Company's explanation.

I find that the General Counsel has made a prima facie showing that the Company withheld a wage increase, rather than a bonus, from its plant employees in March or April, to discourage them from supporting the Union. I note that the complaint alleged the withholding of a bonus and did not mention a wage increase. However, the facts regarding the withholding of the wage increase were fully litigated before me, and the issue of law they raised is closely related to the complaint allegation. Accordingly, I have considered that issue. *Sunbeam Corp*., 287 NLRB 996, 998 fn. 8 (1988).

Contrary to the Company's assertions in its brief, the record provided a strong showing that the Company used the plant employees' concern about a wage increase to discourage them from supporting the Union. During the preelection period, Acting Plant Manager Schimel demonstrated the Company's unlawful motive. I found that Schimel offered completion of the Company's wage review as reward for the employees' rejection of the Union in the coming representation election. I have also found, that in early April, prior to the scheduled representation election, Vice President Keel suggested to employee McRaney and other body line employees that the Company was punishing them for their union activity by withholding a wage increase from them. Finally, as found above, on April 13 or 14, Acting Company President Kelly Dier held out a wage increase as an inducement for the plant employees to get rid of the Union.

The Company's proffered explanation of its refusal to grant a wage increase to its plant employees was refuted by Bob Schimel's credited testimony before me. I have found above from his testimony, that prior to the Union's arrival at its plant, the Company had decided to give its plant employees a wage increase. I also found from Schimel's testimony, that in February, before the union campaign began, the Company's wage survey was ''pretty well completed'' (Tr. 399). Finally, Schimel conceded in his testimony before me, that the Company withheld the wage increase to the plant employees because of the union activity among them.

In sum, the General Counsel's showing of unlawful motive remained unrebutted in the face of the Company's unsubstantiated explanation. Indeed, the Company's own witness, Bob Schimel, provided further support for the General Counsel's contention. I find therefore, that the Company withheld a wage increase from its plant employees during the preelection period, in March or April, because some of them supported the Union. I also find that the Company withheld the wage increase from its plant employees to discourage them from engaging in union activity or otherwise supporting the Union. Therefore, I further find that by withholding the wage increase from its plant employees for those reasons, in March or April, the Company violated Section 8(a)(3) and (l) of the Act.

3. Plant safety rules[23]

Since 1985, Fontaine, Inc., has provided safety awareness and safety incentive programs for the Company. In the summer of 1987, Fontaine, Inc., sought to reduce accidents at the Company's Collins plant, by emphasizing safety. In October of the same year, the Company promulgated safety rules which required its plant employees to wear safety shoes and safety glasses and prohibited them from running in the plant or elsewhere on the Company's premises. The Company also required that its plant employees wear earplugs at work. These rules have remained in effect since their promulgation.

Included in the Company's safety program are weekly meetings between supervisors and their employees and quarterly plantwide meetings at which it awards safety incentive bonuses. The Company held these meetings and awarded merited safety bonuses at all times material to this case.

At the quarterly plantwide meetings, plant safety is discussed and evaluated, and the employees, who have earned safety incentive bonuses of $20, receive them. The Company held such a meeting in March. If a department of the plant employees did not have an accident during the quarter, each of the department's employees receives a bonus at the meeting. An accident occurred on the body line in January. Consequently, the Company did not award a safety bonus to that department at the March meeting.

Prior to the Union's campaign, each plant supervisor held a weekly safety meeting with subordinates. The supervisor would invite suggestions to improve plant safety and would ask if there were any unsafe conditions in the plant. Infrequently a supervisor would remind the assembled employees about the Company's safety rules. In 1988, the Company issued seven disciplinary writeups to plant employees for infractions of its safety rules, including four for failure to wear safety glasses.

I find from Supervisor Charles Fairley's testimony that in January, his department, the body line, suffered an accident involving eye flash burns. I also find from Fairley's testimony that the injured employee lost time from work. This incident resulted in the loss of safety bonuses for Fairley and his employees for the first quarter of the year. I find from Acting Plant Manager Schimel's testimony, and the fact that he was in immediate charge of the Collins plant's day-to-day operations, that he was aware of this incident in January, soon after it occurred.

After the Union's campaign began at the Company's plant, Acting Plant Manager Schimel instructed his supervisors to make the employees more safety conscious. Schimel's testimony did not provide any details as to the content of his instructions to the plant supervisors.

The testimony of current and former Company employees reflected the impact of Schimel's instructions. I find from the testimony of employee Griffith and eight other employees or former employees, that after the Union began organizing the Collins plant, the Company's supervisors regularly stressed its safety rules at their weekly meetings. In particular, the supervisors instructed the employees to wear safety shoes, safety glasses, and earplugs at work, and to refrain from running in the plant. Also, the supervisors threatened the use of disciplinary warnings to enforce those rules.

The testimony of the same witnesses also showed that after the Union began its campaign, the Company's supervisors enforced its safety rules against the plant employees with increased vigor. Supervisors no longer permitted employees to work in poorly lighted areas with safety glasses resting on their foreheads. Supervisor Fairley admittedly instructed his employees to wear their safety glasses at work and issued a warning to employee Jackie Owens for failing to do so. Other supervisors tightened up on their enforcement of the safety glass requirement. Employees could no longer

[23] The facts regarding the Company's safety program and its administration are not in dispute.

move freely about the plant without safety glasses on. Supervisors were now quick to remind such employees of the Company's rule and of a possible disciplinary writeup.

Employees who had been negligent about wearing safety glasses prior to the Union campaign felt the impact of the Company's changed attitude. Prior to the Union's campaign, employee Irwin frequently worked at the Company's plant without safety glasses on. After the Union campaign began, Supervisors Wise and Kirkley, respectively, observed him working without safety glasses on five occasions and instructed him, each time, to wear them. In September, when the last of these incidents occurred, Kirkely issued a written verbal warning to Irwin.

Employee Jackie Owens experienced a marked increase in disciplinary writeups after the union campaign began. Prior to that event, he had received four or five verbal and written warnings for safety glass and earplug violations. Indeed, the Company introduced into evidence two disciplinary warnings which it issued to Owens in 1987 and 1988, respectively. In the earlier writeup, the Company scolded him for wearing his safety glasses on top of his head. In the later warning, the Company criticized his neglect to wear safety glasses and earplugs, and warned that a further infraction would incur a 3-day layoff. From April to September 1989, the Company issued 14 or 15 such warnings to him for failing to wear safety glasses.

On April 18, Kirkley issued a verbal warning to Owens for running in the plant. Owens believed that he was only walking fast. Kirkley defined Owens' speed as ''faster than a trot.'' Owens signed the warning under protest. On the previous day, Kirkley had warned Owens about compliance with the Company's safety rules. Kirkley did so because Owens was ''bad about not wearing his safety glasses.'' Kirkley was careful to report the oral warning of the previous day in the verbal warning of April 18.

Kirkley admitted that he had not issued a warning for running to any other employee. However, there was no showing that he had observed any other employee running in the Company's plant. Indeed, Kirkley denied that he had permitted other employees to run in the plant.

In 1987, Supervisor Kirkley issued a verbal warning to employee King Simmons for failing to wear his safety glasses at work. During the summer of 1989, the Company verbally warned Simmons for the same offense.

The General Counsel alleges that the Company retaliated against its employees' union activity by enforcing its safety rules more strictly after the Union' campaign had begun at its Collins plant. The Company urges dismissal of this allegation on the ground that the evidence did not show more stringent enforcement of those rules after the Union began its organizing effort at the Company's plant. Contrary to the Company's position, I find that it stepped up enforcement of its safety rules after the Union's arrival in 1989. However, I also find that the General Counsel has not made a prima facie showing that union activity was a motivating factor in the Company's increased attention to plant safety.

The General Counsel has shown that the Company intensified its efforts to improve plant safety soon after the Union began organizing the Collins plant employees. On Acting Plant Manager Schimel's instructions, supervisors used their weekly meetings with employees to stress compliance with the Company's rules regarding safety glasses, safety shoes, and earplugs. I also find that a tightening of enforcement accompanied the repeated recitation of safety rules. Supervisors orally warned employees about wearing safety glasses and stepped up the use of writeups to enforce that requirement.

I also find that the Company's intensified enforcement of its safety rules occurred in circumstances which suggested that union activity was a factor in this change of attitude. Thus, during February, March, April, and the summer, the Company's management was embarked upon an antiunion campaign punctuated with a variety of unfair labor practices, including threats of economic reprisal and the withholding of a wage increase. The concurrence of the increased attention to safety rules and their enforcement, with the Company's manifestations of hostility to the Union provided considerable support for the General Counsel's contention.

I have no doubt of the Company's animosity toward the Union and its supporters at the Collins plant. However, I am not convinced that union animus was a motivating factor in the Company's effort to improve plant safety after the Union had begun its organizing campaign. Vice President Keel's testimony showed that the Company and its parent have exhibited a genuine interest in improving safety at the Collins plant since 1987. Before the advent of the Union, the Company issued written warnings to employees for violating plant safety rules, held safety meetings and gave incentive bonuses to encourage employees to comply with those rules. After the Union appeared at the Collins plant, the Company maintained these practices.

However, Acting Plant Manager Schimel became concerned when the Company experienced an accident on its body line in January, and a second accident on the same line during the second calendar quarter of 1989. These accidents resulted in lost working time and the withholding of safety bonuses from the body line department for both quarters There was no allegation that Schimel's withholding of these bonuses was violative of the Act. Thus, I find that here, again, the Company was pursuing established policy.

The occurrence of some ''little accidents'' in 1988 and in early 1989, and the ''lost time'' accidents in the first and second quarters of 1989 troubled Schimel. He wanted his employees to pay more attention to safety. After the Union campaign had begun, Schimel instructed his supervisors to ''get the employees to understand that safety was a very important part of our business.'' I find it likely that Schimel's instructions resulted in the increased attention to the Company's safety rules at the weekly meetings and on the production floor, as testified to by the General Counsel's witnesses.

Schimel issued no new safety rules. He added the stockroom to the plant areas where employees were required to wear safety glasses. He did not instruct his supervisors to issue more disciplinary warnings for safety violations. Instead, he increased his supervisors' awareness of plant safety. I find it likely that Schimel's policy brought with it enhanced perception of the employees' chronic neglect to wear safety glasses. Thus, supervisors were likely to remind employees to wear their safety glasses and to issue disciplinary warnings to those who failed to do so. Similarly, Supervisor Kirkley was likely to notice Owens' violation of the Company prohibition of running and discipline him.

In sum, after considering all the relevant evidence, I find that the General Counsel has not shown by a preponderance of the record evidence, that the Company's hostility to its

employees' union activity was a motivating factor in its effort to improve plant safety. Instead, I find that the Company has shown that Schimel's concern about plant safety, and not union activity, provoked him to make his supervisors and employees more aware of the Company's rules regarding plant safety. Accordingly, I shall recommend dismissal of the allegation that the Company enforced its safety rules more strictly in violation of Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. By interrogating its employees about their union activity and the union activity of their fellow employees; by soliciting its employees to withdraw their signed authorization of the Union to act as their collective-bargaining representative; by threatening its employees with plant closure, discharge, layoff, loss of overtime, and other benefits because they supported the Union; by advising its employees that the Company would never permit its employees to have a union and would never sign a collective-bargaining agreement; by creating the impression among its employees that their union activity was under surveillance; by threatening to blackball employees if they engaged in union activity; by promising its employees increased wages and promotions if they withheld support from the Union; by telling its employees that bonuses had been withheld from them because they engaged in union activity; by telling employees that other company employees had received bonuses because they had not engaged in union activity; and by promulgating a rule prohibiting employees from talking about the Union during worktime, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By withholding a wage increase from its plant employees on or about April 1, 1989, and by issuing a warning to employee Jackie Owens on April 14, 1989, the Company violated Section 8(a)(3) and (1) of the Act.

3. The Company did not violate Section 8(a)(1) of the Act by questioning employee King Simmons in the summer of 1989, regarding his attitude toward the Union .

4. The Company did not violate Section 8(a)(1) of the Act on February 17, 1989, by soliciting employee Bobby Harvey's signature on a document canceling his authorization of the Union to act as his bargaining representative.

5. The Company did not violate Section 8(a)(3) and (1) of the Act by more stringently enforcing its plant safety rules.

REMEDY

Having found that the Company has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As the Company discriminatorily withheld a wage increase from its plant employees on or about April 1, 1989, I shall recommend that it be required to make those employees whole for any loss of earnings and other benefits they may have suffered as a result of that discrimination against them, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I shall also recommend that the Company be required to remove from its files any reference to the warning it issued to employe Jackie Owens on April 14, 1989, which I have found violative of the Act, and notify him, in writing, that it has done so and that it will not use this warning against him in any way.

Having found that the Company unlawfully promulgated a rule forbidding employees from talking about the Union during working time, I shall recommend that the Company be required to rescind that rule and remove from its files any warnings issued to employees pursuant to that rule, and notify each of them, in writing, that it has done so and that it will not use those warnings against them in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[24]

ORDER

The Respondent, Fontaine Body and Hoist Company, Collins, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in or support for, or activities on behalf of Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization, by discriminating in any manner against any of its employees in regard to their hire and tenure of employment or any term or condition of employment because of their union membership, sympathies or activities.

(b) Coercively interrogating employees about their union membership, activities or sympathies, or about the union membership, activities, or sympathies of other employees.

(c) Soliciting employees to withdraw their signed authorization of Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, to act as their collective-bargaining representative.

(d) Threatening discharge, plant closure, layoffs, loss of overtime and other benefits, because its employees support or select Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization, as their collective-bargaining representative.

(e) Telling employees that the Company would never permit its employees to have a union, or that it would never sign a collective- bargaining agreement with Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization.

(f) Creating the impression among its employees that their union activities are under the Company's surveillance.

(g) Threatening to blackball employees if they continue to engage in activities in support of Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization.

(h) Promising its employees increased wages and promotions if they withhold their support from Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization.

(i) Informing employees that the Company had withheld a bonus from them because they engaged in activities on behalf of, or otherwise supported, Industrial Union Department,

[24] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization.

(j) Informing employees that other employees of the Company had received bonuses because they had not engaged in activities on behalf of Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization.

(k) Promulgating a rule forbidding employees from talking about Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization, during worktime.

(l) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole its employees for any loss of pay or other benefits they may have suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this Decision, plus interest.

(b) Remove from its files all references to the written warning issued to employee Jackie Owens on April 14, 1989, and notify him in writing that this has been done, and that this warning will not be used against him in any way.

(c) Rescind its rule forbidding employees from talking about Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or about any other labor organization, during worktime.

(d) Remove from its files, all warnings issued to employees for violating its rule forbidding employees from talking about Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, and notify each of those employees, in writing, that this has been done and that the Respondent will not use those warnings against them in any way.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Collins, Mississippi, copies of the attached notice marked ''Appendix.''[25] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

[25] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL not discourage membership in or support for, or activities on behalf of Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization, by discriminating in any manner against any of our employees in regard to their hire and tenure of employment or any term or condition of employment because of their union membership, sympathies, or activities.

WE WILL not coercively interrogate employees about their union membership, activities or sympathies, or about the union membership, activities, or sympathies of other employees.

WE WILL not solicit employees to withdraw their signed authorization of Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, to act as their collective-bargaining representative.

WE WILL not threaten discharge, plant closure, layoffs, loss of overtime, and other benefits, because our employees support or select Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization, as their collective-bargaining representative.

WE WILL not tell employees that the Company would never permit its employees to have a union, or that it would never sign a collective-bargaining agreement with Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, or any other labor organization.

WE WILL not create the impression among our employees that their union activities are under the Company's surveillance.

WE WILL not threaten to blackball employees if they continue to engage in activities in support of Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization.

WE WILL not promise our employees increased wages and promotions if they withhold their support from Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization.

WE WILL not inform our employees that the Company has withheld a bonus from them because they engaged in activities on behalf of Industrial Union Department, AFL–CIO, on

behalf of United Steelworkers of America, AFL–CIO, or any other labor organization.

WE WILL not inform our employees that other employees of the Company had received bonuses because they had not engaged in activities on behalf of Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization.

WE WILL not promulgate a rule forbidding employees from talking about Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or any other labor organization, during worktime.

WE WILL not in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL make whole our employees for any loss of pay or other benefits they may have suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this Decision, plus interest.

WE WILL remove from our files any reference to the written warning issued to employee Jackie Owens on April 14, 1989, and notify him in writing that this has been done, and that this warning will not be used against him in any way.

WE WILL rescind our rule forbidding employees from talking about Industrial Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, or about any other labor organization during worktime.

WE WILL remove from our files all warnings issued to our employees pursuant to our rule forbidding employees from talking about Industrial Union Department, AFL–CIO, on behalf of United Steelworkers of America, AFL–CIO, and notify each of them in writing that we have done so, and that WE WILL not use those warnings against them in any way.

FONTAINE BODY AND HOIST COMPANY